

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA

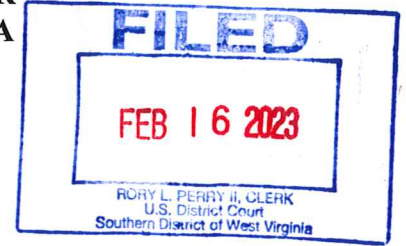
HUNTINGTON DIVISION

GENBIOPRO, INC.

Plaintiff

vs.

Civil Action No: 3:23-cv-00058
(CHAMBERS)



MARK A. SORSAIA, *in his official capacity*
as Prosecuting Attorney of Putnam County,
and, PATRICK MORRISEY, *in his official*
capacity as Attorney General in West Virginia,

Defendants

DEFENDANT MARK SORSAIA'S RULE 12(B)(1)
AND RULE 12(B)(6) MOTION TO DISMISS

Pursuant to Fed. R. Civ. P 12(b)(1) and 12(b)(6), Defendant, Mark A. Sorsaia, hereby moves this Court to dismiss, with prejudice, all claims asserted against him by the Plaintiff in this civil action. This motion is made upon the following grounds.

1. This Court lacks jurisdiction over the claims asserted by Plaintiff against this Defendant because there is no actual case in controversy as between Plaintiff and Defendant. To establish a justiciable case, the Plaintiff must show (1) "that he 'has sustained or is immediately in danger of sustaining some direct injury . . . or threat of injury [that is] both 'real and immediate,' not 'conjectural' or 'hypothetical'"; (2) that is fairly traceable to "the challenged official conduct"; and (3) the injury "is likely to be redressed by a favorable judicial decision." *Shenandoah Valley Network v. Capka*, 669 F.3d 194, 202 (4th Cir. 2012) (quoting *City of L.A. v. Lyons*, 461 U.S. 95, 101-02, 103 S. Ct. 1660, 75 L. Ed. 2d 675 (1983) (citations omitted); *Lujan v. Defs. of Wildlife*,

504 U.S. 555, 560-61, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992)). In this case, Plaintiff cannot make any of these required showings. Therefore, Defendant Sorsaia is entitled to an Order dismissing all claims against him in accordance with Fed. R. Civ. P 12(b)(1).

2. Plaintiff has failed to state any claims against Defendant Sorsaia upon which relief may be granted. In *Iqbal v. Ashcroft* 556 U.S. 662 (2009) the United States Supreme Court reiterated and amplified upon the principles relating to pleading a viable cause of action that it had announced two years earlier in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007). Specifically, the Supreme Court in *Iqbal* held:

To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." ... A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.

556 U.S. at 678.

In this case, the Complaint alleges no facts from which this Court may reasonably infer that Defendant Sorsaia is liable for any misconduct toward Plaintiff. The entire thrust of Plaintiff's Complaint is to prevent statewide enforcement of the Criminal Abortion Ban as related to distribution and sale of mifepristone. Defendant Sorsaia is not alleged to have initiated or threatened any prosecutions in Putnam County to enforce the Criminal Abortion Ban as relating to distribution and sale of mifepristone and no specific facts been plead to indicate that Plaintiff or any other parties faces any imminent risk of such prosecution in Putnam County. The Complaint lacks the facial plausibility required by *Iqbal* to demonstrate that Plaintiff is at risk of suffering any harm due to the conduct of Defendant Sorsaia. Therefore, Defendant Sorsaia is entitled to an Order dismissing all claims against him in accordance with Fed. R. Civ. P 12(b)(6).

WHEREFORE, and for the reasons stated above, Defendant, Mark A. Sorsaia, moves that this Court enter an Order dismissing the Complaint filed against him, with prejudice, and grant him such other relief to which the Court may deem that he is entitled.

**MARK A SORSAIA, in his official capacity as
Prosecuting Attorney of Putnam County**

By Counsel

/s/ Jennifer Scragg Karr
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Defendants

CERTIFICATE OF SERVICE

I, the undersigned, counsel for Defendant, Mark A. Sorsaia, do hereby certify that on this 16th day of February, 2023 I served a copy of the foregoing *Defendant Mark Sorsaia's Rule 12(b)(1) and Rule 12(b)(6) Motion to Dismiss* with the Clerk of the Court using the CM/ECF system that will send notification of such filing to all counsel of record.

/s/ Jennifer Scragg Karr
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